

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 25-CR-1075-GBW

JOSE FLORES-PENALOZA,

Defendant.

DEFENDANT’S REPLY TO GOVERNMENT’S RESPONSE TO MOTION TO DISMISS
FOR IMPROPER VENUE

The Government has not established that Mr. Flores-Penalosa committed the offense of Illegal Entry into the United States by crossing into the District of New Mexico. According to Exhibit 1 submitted by the Defense pursuant to its Motion to Dismiss for Improper Venue (Doc 10), the agent states he was first seen at a place called Valencia Corrals, approximately one mile north of the international border. According to the map submitted by the Government in its Response to Defendant’s Motion to Dismiss, Exhibit 2, Valencia Corrals is located in the State of Arizona.¹ Undersigned confirmed the government’s coordinates on Google Maps and it is, in fact, located in Arizona.² This viewing was approximately 3.5 hours prior to apprehension (or seven (7) hours according to the Lordsburg version, see Def. Ex. 3). Def. Ex. 1. Thus, according to the report and map provided by the Government, the first alleged sighting of Mr. Flores-

¹ The Government also submitted a map that appeared to show different zones, and cited to the map to show

² Google Maps Location: [31°20'36.9\"N 109°03'27.4\"W - Google Maps](https://www.google.com/maps/place/31°20'36.9\)

Penaloza was in the District of Arizona. If the location of apprehension is accurate, then he crossed into New Mexico, after his initial alleged entry into the United States.³ Because 8 U.S.C. §1325(a)(1) is not a continuing offense, and it does not appear that the government is arguing otherwise, the proper venue is at the place where the offense was committed.⁴ Because this offense was committed in Arizona, the proper venue is in the District of Arizona.

The Government, in its map, lists the coordinates of his alleged entry into the United States. Govt Ex. 2. However, there has been no disclosure of any agent who witnessed the location of his entry. On the contrary, the agent reports state that he was first located inside the United States, not crossing. It is unclear where the government obtained the specific coordinates relating to the exact position of his alleged entry. If there is a report from the prior day in which an officer witnessed and recorded the location of his entry then followed him for the next 34 hours before he was apprehended, it has not been disclosed to the Defense. The Defense would request the documentation which shows where these location coordinates came from.⁵

Ignoring the coordinates on the map where the Government has suggested he entered and focusing only on those coordinates referencing locations in the disclosed discovery, the locations on the map rather corroborate the assertion that Mr. Flores-Penaloza committed the offense in Arizona and not in New Mexico. In his statement, Agent Staheli mentions agents first saw Mr. Flores-Penaloza's group near Valencia Corrals. (Def. Ex. 1). The government has marked this

³ On another note, his entry and location of apprehension does not appear to cross any of the New Mexico National Defense Area.

⁴ It also appears that the Government concedes that Mr. Flores-Penaloza did state that he entered east of Agua Prieta Sonora not that he told agents he entered west of Antelope Wells as asserted by Agent Campbell of the Lordsburg station. Gov't Response (Doc 11), at 3.

⁵ The Defense has already requested "more specific location information re: the location of my client's alleged entry..." but review of the information provided in the discovery process are silent regarding the specific entry coordinates listed on the Govt Ex. 2. Defense does not believe this map, alone, is sufficient to fulfill that request.

location in red. The location is in Arizona. (Govt. Ex. 2). The agent states it was about a mile north of the border, and the coordinates presented by the government, are also about a mile from the border. About three hours later, the group was seen heading south towards Mexico. The apprehension coordinates, however, appear to be northeast of the initial area of sighting, but it is east. Thus, Government's Exhibit 2 shows a probable trajectory of travel in which the group was heading to the east. Following that trajectory backwards (since the sighting happened about 30 hours after the purported entry) would mean he likely entered further west than where he was found. Again, increasing the likelihood he entered through Arizona.

Whether he was ultimately found in New Mexico does not make New Mexico the proper venue because the crime was not committed in New Mexico. Agents from the Douglas Sector spotted him in Arizona (according to the Government's map) and took him to the station in Douglas where he was arrested. This is an Arizona case. That he was later taken to Lordsburg where they changed the arresting agent's duty station, the time of the apprehension, and changed what they report Mr. Flores-Penaloza told them – does not change the fact that the location of Mr. Flores-Penaloza's alleged entry is in Arizona, rather it raises questions about why the facts were changed in the Lordsburg report. Likewise, the government will be unable to prove Mr. Flores-Penaloza entered the New Mexico National Defense Area for the purpose of committing an illegal entry when the evidence suggests he entered in Arizona and was apprehended outside of the New Mexico National Defense Area.⁶

In conclusion, the Government's Exhibit 2, does not show, by a preponderance of the evidence that Mr. Flores-Penaloza committed the offense of illegal entry (which forms the basis

⁶ A map of the actual military land area has been requested but not yet received and Defendant does not waive any arguments regarding whether the entry coordinates or apprehension coordinates posed by the government even fall within the designated land area.

of the other two charges) within the boundaries of the District of New Mexico. The alleged coordinates of entry are not substantiated by either of the agent reports. The other two coordinates are more aligned with the agent reports, including the Area of Responsibility Mr. Flores-Penalzoa was first signed in, the direction the group was first seen heading, Mr. Flores-Penalzoa's statement of where he entered (east of Agua Prieta Sonora and therefore east of Douglas, Arizona), and show there is a preponderance of the evidence that proper venue lies with the District of Arizona.

Respectfully submitted,

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By: /s/ Victoria Trull

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